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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,734	07/18/2005	Mats Ekeroth	6485-0045WOUS	1338

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MICHAUD-DUFFY GROUP LLP
306 INDUSTRIAL PARK ROAD
SUITE 206
MIDDLETOWN, CT 06457

EXAMINER

MCMAHON, MARGUERITE J

ART UNIT PAPER NUMBER

3747

DATE MAILED: 02/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/518,734

Applicant(s)

EKEROTH ET AL.

Examiner

Marguerite J. McMahon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 12-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/16/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 12-18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 12, 13, 17, 18, 20, and 21 of U.S. Patent No. 6,783,571 in view of Bellanca et al (3,949,718). The claims cited in Patent No. 6,783,571 are basically claiming the same thing as the instant invention except that they do not spell out that the pressure is maintained at either a predetermined value or interval, although they do state that the rotor is changed in response to a sensed change of an over pressure of the crankcase gas, which implies that the rotor is changed to respond to the pressure to maintain it at a desired value or range of values. However, even though this concept has been included in a more explicit way in claim 12

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of the instant invention, this does not constitute a patentable distinction, because it is known in the art to maintain the crankcase pressure at a desired level. Bellanca et al state at column 1, lines 32-38 and 40-45 that means are employed to restrict the flow of vapors by employing a ball valve 58, which is unseated when the crankcase "exceeds the predetermined value of pressure..." Thus, the original reference teaches utilizing the centrifugal separator to control the pressure in the crankcase, and the secondary reference teaches that it is old to maintain the crankcase at a desired pressure value. It would have been obvious to one having ordinary skill in the art to modify the original reference by maintaining the crankcase at a predetermined pressure, in order to provide improved crankcase function.

Claim 19 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 12, 13, 17, 18, 20, and 21 of U.S. Patent No. 6,783,571 in view of Bellanca et al (3,949,718), and further in view of JP358106123. U.S. Patent No. 6,783,571 in view of Bellanca et al (3,949,718) show everything except employing a frequency converter on the motor. JP358106123 teaches that it is old in the art to employ a frequency converter 22 on the motor 21. It would have been obvious to one having ordinary skill in the art to modify the original reference by employing a frequency converter in order to change frequencies, as appropriate for the motor employed.

Claims 20 and 22 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6, and 17 of U.S. Patent No. 6,783,571. Although the conflicting claims are not identical, they are not patentably

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distinct from each other because they are basically claiming the same thing. Note, with respect to claim 22 that claim 17 of the reference claims changing the rotational speed of the electrical motor by means of a sensed change of a crankcase gas flow, which is one example of a parameter that is related to the load to which the engine is subjected to.

Claim 21 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 6 of U.S. Patent No. 6,783,571 in view of JP358106123. The original reference, 6,783,571, shows everything except employing a frequency converter on the motor. JP358106123 teaches that it is old in the art to employ a frequency converter 22 on the motor 21. It would have been obvious to one having ordinary skill in the art to modify the original reference by employing a frequency converter in order to change frequencies, as appropriate for the motor employed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marguerite J. McMahon whose telephone number is 703-308-1956. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yuen Henry can be reached on 703-308-1946. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MARGUERITE MCMAHON
PRIMARY EXAMINER